

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:12-cr-0038-JMS-MJD
)	
THOMAS E. BEHLING, II,)	
)	
Defendant.)	- 01

REPORT AND RECOMMENDATION

On March 7, 2018, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on January 9, 2018. Defendant Behling appeared in person with his appointed counsel Gwendolyn Beitz. The government appeared by James Warden, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Ross Carothers.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Behling of his rights and ensured he had a copy of the Petition. Defendant Behling orally waived his right to a preliminary hearing.

2. After being placed under oath, Defendant Behling admitted violation no. 1.
[Docket No. 73.]

3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation
Number**

Nature of Noncompliance

- 1 **“The defendant shall refrain from any unlawful use of a controlled substance.”**

The offender was released from the U.S. Bureau of Prisons on November 24, 2017. He submitted a urine sample on November 27, 2017, which tested positive for cocaine. He initially denied any illicit drug use, and the sample was forwarded to Alere National Laboratory for confirmation. Prior to receiving a result, Mr. Behling called the probation officer and admitted using cocaine prior to submitting his urine sample.

4. Government moved to dismiss violation nos. 2 and 3 and the same was granted.

5. The Court finds that:


- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant’s criminal history category is VI.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 21 to 24 months’ imprisonment.

6. The parties jointly recommended a sentence of twelve (12) months and one (1) day, with no supervised release to follow. Defendant, without objection by the government, requested placement at a facility close to Indianapolis, Indiana.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions set forth in violation no. 1 of the Petition, and recommends that Defendant’s supervised release be revoked, and that Defendant be sentenced to the custody of the Attorney General or his designee for a period of twelve (12) months and one (1) day, with no supervised release to follow. The Defendant is to be taken into custody immediately pending the District Judge’s action on this Report and Recommendation. The Magistrate Judge further recommends that the Court recommend Defendant’s placement at the appropriate closest to Indianapolis, Indiana.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to this Report and Recommendation.

Dated: 7 MAR 2018



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

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